RECORD AND BRIEFS

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IN THE
Supreme Court of the United States

DAVID PATCHAK,

Petitioner,

v.

RYAN ZINKE, SECRETARY OF THE INTERIOR, *ET AL.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF OF WAYLAND TOWNSHIP, WAYLAND AREA CHAMBER OF COMMERCE, AND OTHER LOCAL GOVERNMENTS AND BUSINESS ASSOCIATIONS AS *AMICI CURIAE* SUPPORTING RESPONDENTS AND AFFIRMANCE

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INTEREST OF *AMICI CURIAE*

Amici Curiae are local government entities and business associations in southwest Michigan, a region that includes the 147-acre Bradley Property at issue in this case.[1] In 2009, the United States acquired the Bradley Property on behalf of Respondent Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians (the "Band"). In 2014, Congress ratified and confirmed that the Bradley Property was taken into trust for the Band. The Band's economic development of the Bradley Property has provided, and continues to provide, substantial economic benefits to *Amici* and the local communities they serve.

Amici Wayland Township, Allegan County, City of Wayland, Dorr Township, Hopkins Township, Martin Township, Wayland Union Schools, Allegan Area Educational Service Agency, and Yankee Springs Township are local government entities in southwest Michigan that are engaged in cooperative efforts to foster economic development in an area that includes the Bradley Property. Several of the *amici* local government entities have entered into a revenue-sharing agreement with the Band pursuant to a compact between the Band and the State of Michigan that has been approved by the Secretary of the Interior on behalf of the United States.

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[1] Pursuant to this Court's Rule 37.6, *Amici* affirm that no counsel for a party authored this brief in whole or in part, that no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief, and that no person other than *Amici* or their counsel made such a monetary contribution. The parties have consented in writing to the filing of this brief and their consents have been filed with the Clerk.

Amicus Deputy Sheriff's Association of Michigan is an association of sheriffs' deputies whose members benefit from economic development of the Bradley Property, which has generated revenues that are being used to hire and retain law enforcement officers and a K-9 unit.

Amici Wayland Area Chamber of Commerce, Allegan Area Chamber of Commerce, Barry County Chamber of Commerce, Barry County Economic Development Alliance, Dorr Business Association, Gun Lake Business Association, Kalamazoo Regional Chamber of Commerce, and West Michigan Hispanic Chamber of Commerce are business associations whose members benefit from the Band's economic development of the trust lands. The businesses represented by the *amici* associations would suffer a devastating loss of revenue and jobs if the federal government's decision to take the Bradley Property into trust were reversed and, as a result, the revenues generated by the Band's economic development efforts were to cease. For these local business entities, as for the local government entities, uncertainty over the status of the Bradley Property arising from continuing litigation deters investment and interferes with reliable long-term planning.

When this case first came before the Court, *Amici* submitted a brief to explain the nature and extent of the benefits that development of the Bradley Property has conferred on the local community, the importance of those benefits to local governments and businesses, and the substantial harm that is caused by a legal regime that leaves the status of trust lands such as the Bradley Property open to challenge over an extended period of time. *See* Br. of Wayland

Township *et al.* as *Amici Curiae*, *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak* ("*Patchak I*"), Nos. 11-246 & 11-247 (Feb. 14, 2012). In addition to addressing certain legal issues, *Amici* file this brief to confirm that the Bradley Property continues to provide substantial benefits to the community and that developments since this Court's decision in *Patchak I* support Congress's decision to eliminate the legal uncertainty over the status of the Bradley Property.

SUMMARY OF ARGUMENT

1. This Court has applied a functional approach to determine whether legislation is within Congress's powers under the Constitution. In applying this approach, the Court looks to the practical operation of the statute rather than Congress's use of "magic words or labels." *Quill Corp. v. North Dakota*, 504 U.S. 298, 310 (1992) (internal quotation marks omitted). Under the functional approach, "if the Constitution permits Congress to do exactly what [the Court] interpret[s] th[e] statute to do," the statute will not be struck down "because Congress used the wrong labels." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 565 (2012). The functional approach supports affirmance in this case, because the Constitution permits Congress to do exactly what it did here.

The Gun Lake Trust Land Reaffirmation Act ("Gun Lake Act"), Pub. L. No. 113-179, 128 Stat. 1913 (2014), does two things: It ratifies the decision of the Secretary of the Interior to take the Bradley Property into trust, and it directs that litigation pertaining to the Bradley Property shall be promptly dismissed. Both results are within Congress's constitutional

powers. As to the first, Congress may exercise its broad powers to regulate Indian affairs and dispose of property belonging to the United States by directing that particular property shall be held in trust for the Band. As to the second, Congress may exercise its powers to define and limit the jurisdiction of federal courts, and to limit waivers of federal sovereign immunity, by directing that non-final cases concerning the Bradley Property shall be promptly dismissed.

Petitioner argues that the Gun Lake Act should not be treated as a jurisdiction-limiting statute because it does not use the word "jurisdiction." But the Gun Lake Act is reasonably interpreted as a restriction on jurisdiction (or, alternatively, as a restriction on Congress's waiver of sovereign immunity) because it requires the dismissal of cases concerning the Bradley Property without regard to any procedural step the litigants may have taken or failed to take. Even if that were not so, the Gun Lake Act should be upheld under the functional approach, because its practical results are within Congress's powers under the Constitution.

2. In *Patchak I*, the Band and its *amici* argued that continuing litigation over the status of the Bradley Property posed a significant obstacle to the Band's ability to attract investment and promote economic development on lands taken into trust. The Court noted that this argument is "not without force, but it must be addressed to Congress." 567 U.S. 209, 223 (2012). Congress has now addressed that argument and determined that litigation concerning the Bradley Property should come to an end. The substantial economic benefits generated by the Band's

development of the Bradley Property – including the direct creation of more than 1,000 jobs and a revenue-sharing agreement with local governments – support Congress's policy judgment embodied in the Gun Lake Act. By ending the uncertainty arising from continuing litigation, Congress cleared the way for the Band and the surrounding community to realize additional benefits from the Bradley Property.

ARGUMENT

I. The Gun Lake Act Is Within Congress's Powers Under the Constitution.

A. The Constitutional Analysis Turns on the Practical Operation of the Statute Rather Than the Precise Words Congress Used.

In the Gun Lake Act, Congress ratified and confirmed the decision of the Secretary of Interior to take the Bradley Property into trust and directed that, notwithstanding any other provision of law, actions pertaining to the Bradley Property shall be promptly dismissed. *See* 128 Stat. 1913. Both these results are within the powers granted to Congress by the Constitution. In deciding to take the Bradley Property into trust, the Secretary exercised authority delegated by Congress under the Indian Reorganization Act. 25 U.S.C. § 5108. Congress undoubtedly retains authority to direct that particular property belonging to the United States be taken into trust, and to exercise that authority without regard to limitations that Congress placed on the Secretary's exercise of delegated authority under the Indian Reorganization Act. Moreover, the Constitution grants Congress extensive authority to

determine the extent of the federal courts' jurisdiction to hear and decide cases. *See, e.g.*, *Palmore v. United States*, 411 U.S. 389, 401 (1973).

Petitioner argues that Congress exceeded its constitutional powers by directing that a pending lawsuit be dismissed without "amending underlying substantive or procedural laws." Pet. Br. 18. In responding to this argument, the Federal Respondents and the Band properly emphasize the settled rule that "every reasonable construction must be resorted to in order to save a statute from unconstitutionality." *Hooper v. California*, 155 U.S. 648, 657 (1895). In applying this rule, the courts do not ask whether a saving construction is the best or most natural interpretation of the statutory language, but only whether it is a "fairly possible" construction. *Crowell v. Benson*, 285 U.S. 22, 62 (1932). The Federal Respondents and the Band demonstrate that this "fair construction" principle is sufficient to refute Petitioner's constitutional argument. *See* Fed. Resp. Br. 19-23, 26-27; Band Br. 19-23, 32-34.

An additional principle lends further support to that result. In considering whether legislation is a valid exercise of Congress's power to "lay and collect Taxes," Art. I, § 8, cl. 1, the Court has held that the presence or absence of "magic words or labels" should not "disable an otherwise constitutional levy." *Quill*, 504 U.S. at 310 (internal quotation marks omitted). Instead, in "passing on the constitutionality of a tax law," the Court is "concerned only with its practical operation, not its definition or the precise form of descriptive words that may be applied to it." *Nelson v. Sears, Roebuck & Co.*, 312 U.S. 359, 363 (1941) (internal quotation marks omitted). The Court

applied this "functional" approach to uphold the constitutionality of the Affordable Care Act, rejecting an argument that "even if the Constitution permits Congress to do exactly what we interpret this statute to do, the law must be struck down because Congress used the wrong labels." *Sebelius*, 567 U.S. at 565, 569.

There is no valid reason to limit this functional approach to statutes that can be upheld as a valid exercise of the taxing power. *Cf. Sebelius v. Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 153 (2013) (noting that Congress need not "incant magic words" to render a statutory limitation jurisdictional). Indeed, the functional approach and the principle that any "fairly possible" saving construction must be adopted are two aspects of the broader principle that "[p]roper respect for a co-ordinate branch of the government" requires that the Court strike down an Act of Congress only if "the lack of constitutional authority to pass [the] act in question is clearly demonstrated." *United States v. Harris*, 106 U.S. 629, 635 (1883). Accordingly, the Court should not strike down the Gun Lake Act unless it concludes that the practical results of the statute exceed Congress's powers under the Constitution.

B. Under a Functional Analysis, the Gun Lake Act Is Constitutional.

Multiple powers granted to Congress in the Constitution support the validity of the Gun Lake Act. Congress has power to "dispose of . . . Property belonging to the United States" under Art. IV, § 3, cl. 2. It also has "plenary and exclusive" power to regulate Indian affairs under Art. I, § 8, cl. 3. *United States v. Lara*, 541 U.S. 193, 200 (2004) (internal quotation marks omitted). In addition, this Court's appellate jurisdiction is expressly subject to "such

Exceptions, and . . . Regulations as the Congress shall make," Art. III, § 2, cl. 2, and Congress has unrestricted authority to "ordain and establish" inferior federal courts, Art. III, § 1, cl. 1.

These multiple powers are sufficient to uphold the Gun Lake Act. Indeed, this Court suggested as much in *Patchak I* by noting that Congress could, and perhaps "should," expand the preclusion of judicial review in the Quiet Title Act to "the full range of lawsuits pertaining to the Government's ownership of land." 567 U.S. at 224. Having considered the matter, Congress has determined that the full range of lawsuits pertaining to the Government's ownership of the Bradley Property should be precluded.

As both the United States and the Band note, Congress did not direct the courts to reach any particular result – or, indeed, any result – on the merits. Instead, Congress simply directed that any cases concerning the Bradley Property shall be promptly dismissed. Because Congress did not direct the courts to reach a particular result on the merits, or otherwise endorse Congress's policy decision in the Gun Lake Act, Congress did not "commandeer[] the courts to make a political judgment look like a judicial one." *Bank Markazi v. Peterson*, 136 S. Ct. 1310, 1337 (2016) (Roberts, C.J., dissenting). Nor does the Gun Lake Act "retroactively command[] the federal courts to reopen final judgments" or "vest review of the decisions of Article III courts in officials of the Executive Branch." *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 218, 219 (1995).

In addition, as the Federal Respondents and the Band explain, the Gun Lake Act need not – and therefore must not – be construed as "usurp[ing] a

court's power to interpret and apply the law to the [circumstances] before it." *Bank Markazi*, 136 S. Ct. at 1323 (internal quotation marks omitted). As this Court has recognized, Congress has the power to enact legislation that alters the outcome of a pending civil case. *See id.* at 1317 (Congress "may amend the law and make the change applicable to pending cases, even when the amendment is outcome determinative."). Congress may enact such legislation even if it applies to a very small number of cases. *See id.* at 1328 (noting that the Court has "upheld as a valid exercise of Congress' legislative power diverse laws that governed one or a very small number of specific subjects"); *see also Robertson v. Seattle Audubon Soc'y*, 503 U.S. 429 (1992) (upholding legislation enacted to resolve a small number of pending cases identified by name and docket number in the statute at issue).

"The power to control the jurisdiction of the lower federal courts is assigned by the Constitution to Congress. . . ." *Fair Assessment in Real Estate Ass'n, Inc. v. McNary*, 454 U.S. 100, 125 (1981). It is well-settled that Congress's power to limit the jurisdiction of federal courts applies to cases that are pending when a jurisdictional statute is enacted. *See Landgraf v. USI Film Prods.*, 511 U.S. 244, 274 (1994) (stating that the Court "regularly applie[s] intervening statutes conferring or ousting jurisdiction, whether or not jurisdiction lay . . . when the suit was filed"). *See also Kline v. Burke Constr. Co.*, 260 U.S. 226, 234 (1922) ("[J]urisdiction having been conferred may, at the will of Congress, be taken away"; if that happens, "all pending cases though cognizable when commenced must fall").

Petitioner contends that the Gun Lake Act is not a jurisdiction-limiting statute because it does not use the word "jurisdiction." But as noted above, this Court does not ask whether Congress used the proper "magic words" when it determines whether a statute is constitutional; instead, it applies a functional approach and asks whether "the Constitution permits Congress to do exactly what we interpret this statute to do." *Sebelius*, 567 U.S. at 569.

In any event, it is fairly possible to interpret the language Congress used in the Gun Lake Act as withdrawing jurisdiction to consider cases concerning the Bradley Property. The statute provides that actions relating to the Bradley Property "shall be promptly dismissed." § 2(b), 128 Stat. 1913. Dismissal is required without regard to any procedural steps the litigants may have taken or failed to take. This statutory language is fairly interpreted as withdrawing jurisdiction from the federal courts. Alternatively, the statute can fairly be interpreted as withdrawing the government's waiver of sovereign immunity in cases concerning the Bradley Property. *See* Fed. Resp. Br. 17; Band Br. 15-26.

This case is similar in many ways to *Robertson*. There, the Court upheld legislation enacted by Congress specifically to resolve "ongoing litigation." 503 U.S. at 433. The Court acknowledged that the statute applied "within a geographically and temporally limited domain," identified the "pending cases" it affected "by name and caption number," and had a dispositive effect on "two pending cases." *Id.* at 433, 440. The Court nevertheless held that it was "possible" to interpret the statute at issue as

"amend[ing] applicable law," and therefore concluded that the statute at issue was constitutional without considering the validity of the challenger's expansive reading of *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1871). *Robertson*, 503 U.S. at 441.

The Court can, and therefore should, follow the same approach here. It is fairly possible to interpret the Gun Lake Act as withdrawing the court's jurisdiction over cases concerning the Bradley Property or as withdrawing the government's waiver of sovereign immunity from such suits. Moreover, the Gun Lake Act is constitutional if the Court applies a functional approach that looks beyond the particular form of words Congress used to the practical results of the statute.

Ultimately, Petitioner's argument comes down to an assertion that the Gun Lake Act is unconstitutional because Congress used the wrong words. But where, as in this case, the issue is whether Congress has exceeded the scope of its powers under the Constitution, the words in the statute are less important than the practical results it enacts. The practical results of the Gun Lake Act are within Congress's broad powers to dispose of property belonging to the United States, to regulate Indian affairs, to determine the jurisdiction of federal courts, and to waive (or not waive) the government's sovereign immunity.

II. The Band's Development of the Trust Lands Provides Substantial Benefits to Local Businesses and Governments.

In *Patchak I*, Wayland Township and other local governments and business associations filed a

brief as *Amici Curiae* that described the significant economic benefits the Band's development of the Bradley Property provided to the surrounding community, including numerous jobs, customers for many small businesses, and revenue for local government programs. *See* Br. of Wayland Township, *et al.* in *Patchak I*. In that brief, *Amici* argued that lawsuits such as this one create legal uncertainty that poses a significant obstacle to the Band's ability to attract investment and promote economic development on lands taken into trust. The Court recognized that this argument is "not without force, but must be addressed to Congress." 567 U.S. at 223.

Congress has now considered that argument and determined that a broad ban on litigation concerning the status of the Bradley Property is warranted. As the Court noted in *Patchak I*, this policy determination is for Congress rather than the courts. *Amici* nevertheless file this brief to demonstrate that the Bradley Property continues to provide significant benefits to the local community that support the policy choice made by Congress.

The development of the Bradley Property has provided a much-needed boost to southwest Michigan's economy. The Band's economic development efforts on the trust lands have directly created over 1,000 new jobs and infused area hotels, restaurants, and other businesses with much-needed customers and revenues. Additionally, in May 2007, the Band entered into a revenue-sharing agreement with the State of Michigan ("Agreement"), which the Secretary of the Interior approved. The Agreement provides the state and local governments with essential resources for schools, roads, sewer and water

systems, city parks, police and fire departments, public safety programs, and other critical needs.[2]

It is difficult for *Amici* to engage in long-term planning, develop and approve budgets, and implement strategies for business growth and economic development when a significant source of projected revenue is at risk. For example, local government *amici* are pursuing new initiatives, including ones requiring significant expenditures that will likely be financed through municipal bonds. Repaying the bonds over time requires a dependable source of revenues from the trust lands. Likewise, businesses that depend on additional demand for their products and services resulting from the development of the trust lands face additional uncertainty in deciding whether to expand and hire additional workers.

A. Development of the Trust Lands Has Created Over One Thousand Jobs.

The economic development of the Bradley Property has directly created over 1,000 new jobs.[3] These new jobs are vitally needed. In August 2009, the month before ground was broken on Gun Lake

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[2] Match-E-Be-Nash-She-Wish/Wayland Township Area, Local Revenue Sharing Board, News and Events (Dec. 2016), http://www.gunlakerevenuesharingbd.org/News%20and%20Events.html.

[3] Jim Harger, *Gun Lake Casino pays out $6.7M in revenue sharing for state and local entities*, MLive (June 1, 2017), http://www.mlive.com/business/west-michigan/index.ssf/2017/06/gun_lake_casino_pays_out_67m_i.html (noting that Gun Lake Casino employs more than 1,000 workers).

Casino, Allegan County reported a 12.6 percent unemployment rate[4] – three percentage points higher than the national unemployment rate of 9.6 percent.[5] Just a year later, the national employment had essentially remained unchanged (at 9.5 percent),[6] but Allegan County's employment rate had dropped by more than two percentage points to 10.3 percent.[7] With the economic development of the Bradley Property, the unemployment rate is down to 2.7 percent in Allegan County as of April 2017,[8] nearly two percentage points *below* the national unemployment rate of 4.4 percent.[9] The Gun Lake Casino is now the sixth-largest employer in Allegan County.[10]

In addition to the 1,000-plus people that Gun Lake Casino employs, approximately 750 skilled workers – including plumbers, electricians, carpenters, and sheet metal workers[11] – were

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[4] U.S. Bureau of Labor Statistics, Local Area Unemployment Statistics Map ("Local Unemployment Statistics"), https://data.bls.gov/map/MapToolServlet?survey=la.

[5] U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey (Sept. 15, 2017) ("Labor Force Statistics"), https://data.bls.gov/timeseries/LNS14000000.

[6] *Id.*

[7] Local Unemployment Statistics, *supra* n. 4.

[8] *Id.*

[9] Labor Force Statistics, *supra* n. 5.

[10] Allegan County Economic Development Commission, Largest County Employers, http://www.alleganconntyedc.org/facts/employers.html.

[11] Kathy Jennings, *Gun Lake Casino opening weekend draws a full house*, Sw. Mich.'s Second Wave (Feb. 17, 2011),

employed during the construction of the $165 million facility.[12] A recent $76 million expansion of the facility resulted in the employment of 300 to 400 skilled workers.[13] A new five-story parking deck that the facility is constructing will create approximately 75 jobs for construction workers.[14]

Development of the trust lands also indirectly created an estimated 1,000 outside vendor jobs during the course of initial construction alone.[15] The creation of new jobs for Gun Lake Casino's expansion is expected to boost the local economy and expand the tax base for local governments.[16]

B. Development of the Trust Lands Has Generated Other Significant Economic Benefits.

At the time of initial development of the trust lands, the Band estimated that, as a result of its

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http://www.secondwavemedia.com/southwest-michigan/devnews/casino0217.aspx.

[12] Herb Woerpel, *Tribe secures $165 million loan for Gun Lake Casino*, Penasee Globe (July 20, 2010), http://www.mlive.com/penaseeglobe/index.ssf/2010/07/tribe_secures_165_million_loan.html.

[13] Logan Crawford, *Gun Lake Casino expansion could have big impact on Allegan, Barry Counties*, WWMT (Apr. 13, 2016), http://wwmt.com/news/local/gun-lake-casino-expansion-could-have-big-impact-on-allegan-barry-counties.

[14] Jim Harger, *Gun Lake Casino opens new 'high-limit' room, adds more parking*, MLive (Sept. 7, 2017), http://www.mlive.com/business/west-michigan/index.ssf/2017/09/gun_lake_casino_opens_new_high.html.

[15] Jenninga, *supra* n. 11.

[16] Crawford, *supra* n. 13.

development of the trust lands, it would spend approximately $30 million annually to purchase vendor goods and services.[17] The Band also estimated that the gaming facility will create 60,000 new guest stays per year at area hotels.[18] Local vendors also expected the gaming facility's recent expansion to increase their revenues.[19]

The Band has also invested in economic development projects that are increasing employment opportunities in southwest Michigan, including the recent construction of a $4.4 million fuel and convenience store located near the gaming facility.[20] For the six-month period ending March 31, 2017, the gaming facility made revenue-sharing distributions of $1.12 million to pursue non-gaming economic development and job creation.[21]

C. Development of the Trust Lands Has Increased Local Government Revenues.

Under the revenue-sharing Agreement, the Band pays a percentage of the revenues from the gaming facility to the State and to local government

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[17] Pete Daly, *Gun Lake Casino has foes at bay*, Grand Rapids Bus. J. (Sept. 5, 2009), http://www.grbj.com/articles/70969.

[18] *Id.*

[19] Crawford, *supra* n. 13.

[20] *Gun Lake Investments, MEDC Announce Fuel and Convenience Store Project at Gun Lake Casino*, Native News Online.Net (Oct. 28, 2016), http://nativenewsonline.net/currents/gun-lake-investments-medc-announce-fuel-convenience-store-project-gun-lake-casino/.

[21] Harger, *supra* n. 3.

entities close to the trust lands. Pursuant to the Agreement, the Band and ten public agencies (each of which has joined this brief as an *amicus curiae*) created a Local Revenue Sharing Board ("the Board").[22] The Board is an independent legal entity charged with establishing criteria and formulas for distributing a portion of the revenues from the gaming facility to the local governments.

Distributions are made to the state and local governments every six months and have totaled over $93 million as of March 31, 2017. For example, in December 2016, local governments received revenue-sharing distributions totaling $1.89 million for the six-month period ending September 30, 2016. Under a formula set out in the Board's bylaws, Wayland Township received a total of $414,914, Allegan County received a total of $333,848, Wayland Schools received a total of $918,668, Allegan Area Educational Service Agency received a total of $135,053, and City of Wayland, Dorr Township, Martin Township, Hopkins Township, Yankee Springs Township, and Leighton Township each received $14,917.[23] Most recently, in May 2017, for the six-month period ending March 31, 2017, the State of Michigan received revenue-sharing

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[22] The public agencies are Allegan County, Township of Wayland, Wayland Union School District, Allegan Area Educational Service Agency, City of Wayland, Township of Dorr, Township of Leighton, Township of Martin, Township of Hopkins, and Township of Yankee Springs.

[23] Match-E-Be-Nash-She-Wish/Wayland Township Area, Local Revenue Sharing Board, News and Events (Dec. 2016), http://www.gunlakerevenuesharingbd.org/News%20and%20Events.html.

distributions of $3.75 million, while local governments received a total of $1.87 million.[24]

Local governments have relied on their revenue-sharing distributions to plan critical infrastructure projects and other initiatives that would not have been possible absent the Band's continued development of the trust lands. Wayland Township, for example, is planning to construct a new water and sewer treatment system that would replace the current septic system and provide significant environmental benefits.[25] Wayland Township has used its revenue-sharing distributions to purchase property needed for this project.

The Agreement has facilitated the efforts of local communities to improve their public safety programs and engage in collaborative intergovernmental agreements. For example, Wayland Township is using a portion of the funds generated by the trust lands to fund a contract with the Allegan County Sheriff's Department under which Allegan County will provide two deputies dedicated to patrolling Wayland Township.[26] This cooperative

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[24] Harger, *supra* n. 3.

[25] Sherry Kuyt, *Water, sewer system could be a long way off for Wayland Township*, MLive (Apr. 25, 2016), http://www.mlive.com/wayland/index.ssf/2016/04/modern_utilities_could_be_a_lo.html.

[26] Herb Woerpel, *Wayland Township to add two Allegan County Sheriff's deputies using Gun Lake Casino disbu[r]sment*, MLive (June 2, 2011), http://www.mlive.com/penaseeglobe/index.ssf/2011/06/wayland_township_to_add_two_al.html.

venture strengthens intergovernmental cooperation, in addition to improving public safety.

The Band's economic development of the trust lands has provided benefits to local communities in addition to those provided under the Agreement. For example, in 2011, the Band donated funds to the Allegan County Sheriff's Department for the purchase of a police dog that can be used for "search and rescue tactics, locating a lost child, and identifying illegal substances."[27] In 2017, the Band made an additional donation for a new police dog to replace one that was retiring.[28] Also in 2017, the Band donated funds to Hopkins Public Schools to buy technological equipment designed to advance student learning.[29]

D. Continuing Legal Uncertainty Undermines the Benefits Derived From Economic Development of the Trust Lands.

A basic function of the law is to provide predictability. *See, e.g.*, *Regan v. New York*, 349 U.S. 58, 64 (1955) ("The law strives to provide predictability so that knowing men may wisely order their affairs . . . ."). Nowhere is this consideration more significant than in the context of title to real

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[27] Gale Courey Toensing, *Gun Lake Tribe Donates K-9 to County Sheriff's Department*, Indian Country Today (Aug. 28, 2011), https://indiancountrymedianetwork.com/news/gun-lake-tribe-donates-k-9-to-county-sheriffs-department/.

[28] Bob Brenzing, *Casino donates $15k to sheriff for K9 unit*, Fox 17 W. Mich. (July 26, 2017), http://fox17online.com/2017/07/26/casino-donates-15k-to-sheriff-for-k9-unit/.

[29] *Gun Lake Tribe gives Hopkins Schools $93,000 for tech purchases*, WWMT (Aug. 16, 2017), http://wwmt.com/news/local/gun-lake-tribe-gives-hopkins-schools-93m-for-tech-purchases.

property. *See, e.g.*, *Republic of Austria v. Altmann*, 541 U.S. 677, 693 (2004) ("[P]redictability and stability are of prime importance" in the context of "property rights.") (internal quotation marks omitted).

By enacting the Gun Lake Act, Congress recognized that the continuing uncertainty generated by this case posed a significant obstacle to realizing the full benefits of the Band's economic development efforts. In order for businesses to make long-term investments, they must be reasonably confident that the investment will be worthwhile. Thus, for example, a hotel operator may cancel or delay plans to build a new hotel or expand an existing hotel because the status of the trust land, and therefore the casino, is uncertain.

Similarly, local governments must be able to rely on the federal government's decision to take the Bradley Property into trust in order to undertake infrastructure improvements and adopt other long-term programs. When a public infrastructure project is stifled due to this uncertainty, it can result in major ripple effects on other economic development efforts.

As noted above, Wayland Township has plans to construct a $17 million environmentally-friendly wastewater treatment facility. The new facility would provide needed utility infrastructure to areas of the Township, including the area around the Bradley Property. Without this infrastructure, the Township is unable to attract additional economic investment to

the area.[30] As a result, the area remains undeveloped even though it is quite close to the gaming facility and more than 60,000 vehicles pass by the area each day.[31]

The continued operation of Gun Lake Casino is central to Wayland Township's efforts to build this facility. Although the revenue-sharing distributions will not directly or fully fund construction of the facility, the expected revenue distributions could be used as collateral to secure the necessary financing.

Additionally, Wayland Township will need to issue revenue bonds or special assessment bonds to fund the new wastewater treatment facility. The Township cannot issue those bonds without knowing whether the Band will continue to operate the casino and pay the fees that will enable the Township to repay the principal and interest on the bonds. *See* Mich. Comp. Laws §§ 141.107, 41.735. Bonds cannot be issued while litigation continues to hold the revenue stream in peril.

Investment in the Gun Lake Casino, including the recent expansion, has already totaled $241 million.[32] The recent expansion would likely result in additional economic development in the immediate vicinity if the Township were able to move forward with building the wastewater treatment facility. This economic development can occur only if the trust status of the land is stable and local governments and

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[30] *See* Koco McAboy, *As Gun Lake Casino expands, area remains empty*, WoodTV (Jan. 7, 2016), http://woodtv.com/2016/01/07/as-gun-lake-casino-expands-area-remains-empty/.

[31] *Id.*

[32] Woerpel, *supra* n. 12; Crawford, *supra* n. 13.

businesses can rely on it as a basis for economic planning.

These infrastructure issues illustrate the practical problems that can arise from lengthy litigation over the status of property held in trust for an Indian tribe, and they help to explain why Congress chose to end continuing legal uncertainty over the status of the Bradley Property.

CONCLUSION

The decision of the court of appeals should be affirmed.

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